

1 MARLENE G. WEINSTEIN, ESQ. (Bar No. 079429)  
2 LAW OFFICE OF MARLENE G. WEINSTEIN  
3 1111 Civic Drive, Suite 380  
4 Walnut Creek, California 94596  
5 Telephone: (925) 942-5100  
6 Facsimile: (925) 933-3801

7 Attorney for Plaintiff  
8 HARPAL KAUR GILL

9 UNITED STATES BANKRUPTCY COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 **In re**

12 **HARPAL KAUR GILL,**

13  
14 **Debtor.**

15 **HARPAL KAUR GILL,**

16  
17 **Plaintiff,**

18 **vs.**

19 **HSBC MORTGAGE SERVICES, INC.**  
20 **and LIME FINANCIAL SERVICES,**  
21 **LTD. ,**

22 **Defendants.**

**Case No. 08-42624 RJN-13**  
**Chapter 13**

**ADVERSARY PROCEEDING**  
**NO. 08-4294**

**APPLICATION FOR**  
**DEFAULT JUDGMENT**

23  
24 **TO THE HONORABLE RANDALL J. NEWSOME, CHIEF BANKRUPTCY JUDGE:**

25  
26 The within application of plaintiff and debtor, Harpal Kaur  
27 Gill ("Plaintiff" and/or "Debtor"), for entry of a default judgment  
28 against defendants, HSBC Mortgage Services, Inc. ("HSBC") and Lime

Application For  
For Default Judgment

1 Financial Services, Ltd. ("LIME FINANCIAL") [hereinafter referred  
2 to collectively as "Defendants"], respectfully represents as  
3 follows:

4  
5 **RELIEF REQUESTED**  
6

7 This action involves an action by Plaintiff, for purposes of  
8 the within Chapter 13 case, to determine the nature, extent and  
9 validity of a lien evidenced by a deed of trust recorded April 18,  
10 2006, in the Contra Costa County Recorder's Office as Document  
11 Number 2006-0120355-00 ("the LIEN" and/or "the HSBC Deed of  
12 Trust"), to disallow a claim filed by HSBC as secured, and to void  
13 the HSBC Deed of Trust recorded against the real property located  
14 at 5028 Garvin Avenue, Richmond, California 94825 ("the Property"),  
15 the legal description of which is as follows:

16 Lot 2, Block 19, Map of East Richmond Blvd., Filed April  
17 6, 2908, Map Book 1, Page 19, Contra Costa County  
18 Records. Parcel ID Number: 523-042-004-3.

19 **FACTUAL AND PROCEDURAL BACKGROUND**  
20

21 On October 16, 2008, the Complaint To Determine The Nature,  
22 Extent and Validity of Lien and To Disallow Secured Claim together  
23 with the Summons and Notice of Pretrial Conference in an Adversary  
24 Proceeding, the "Notice" from the court, the Bankruptcy Dispute  
25 Resolution Program Information Sheet, the Order Re Initial  
26 Disclosures and Discovery Conference and the Adversary Proceeding  
27 Cover Sheet (collectively, "the Package of Documents") were served  
28 on HSBC and LIME FINANCIAL") through its agents for service of

1 process. The original Summons and Certificate of Service was filed  
2 with the court on October 19, 2008, as document number 4 ("the  
3 Original Summons"). See Declaration of Marlene G. Weinstein, ¶4  
4 [hereinafter "MGW Dec.¶4"]

5  
6 The addresses set forth on the Original Summons for the HSBC  
7 and Lime Financial agents for service of process from the online  
8 records of the California Secretary of State on September 3, 2008.  
9 [MGW Dec.¶5]

10  
11 On December 17, 2008, the court issued an order for the clerk  
12 to enter a default against HSBC only, and the clerk entered a  
13 default against HSBC only on December 18, 2008. [MGW Dec.¶6]

14  
15 Due to the fact that the address for LIME FINANCIAL'S agent  
16 for service of process had changed between September 3, 2008 and  
17 December 17, 2008, an alias summons was issued with respect to Lime  
18 Financial, and on December 22, 2008, the Package of Documents were  
19 served on LIME FINANCIAL through its agents for service of process  
20 at the address obtained from the online records of the California  
21 Secretary of State on December 18, 2008. The Alias Summons and  
22 Certificate of Service was filed with the court on December 22,  
23 2008, as document number 9 ("the Alias Summons"). [MGW Dec.¶7]

24  
25 On February 18, 2009, the court issued an order for the clerk  
26 to enter a default against LIME FINANCIAL, and the clerk entered a  
27 default against LIME FINANCIAL on that date. [MGW Dec.¶8]

1 No pleadings or other documents have been received in response  
2 to the Package of Documents from either HSBC or LIME FINANCIAL.  
3 **[MGW Dec.¶9]**

4  
5 In the Proof of Claim and documents filed in support thereof  
6 in the Bankruptcy Case by HSBC on or about June 3, 2008, as Claim  
7 Number 1 on the court claim docket ("the HSBC Claim"), HSBC  
8 asserted a claim against Plaintiff in the sum of \$102,454.59, and  
9 further asserted that said claim is secured by a lien against the  
10 Property which is Plaintiff's residence. Attached as an exhibit to  
11 the HSBC Claim is a copy of a deed of trust in the amount of  
12 \$102,000.00 in favor of Lender, LIME FINANCIAL, which deed of trust  
13 was recorded in or about April 18, 2006, in the Contra Costa County  
14 Recorder's Office as Document Number 2006-0120355-00 ("the LIEN"  
15 and/or "the HSBC Deed of Trust"). **[MGW Dec.¶10 and Request for**  
16 **Judicial Notice and Exhibit "C" thereto]**

17  
18 The online records of the Contra Costa County Recorder's  
19 Office were viewed on July 11, 2010, and there is no assignment of  
20 the HSBC Deed of Trust recorded in the Contra Costa County  
21 Recorder's Office, Plaintiff is informed and believes that LIME  
22 FINANCIAL assigned its interest in the HSBC Deed of Trust through  
23 Mortgage Electronic Registering Service ("MERS"), that LIME  
24 FINANCIAL no longer has an interest in the HSBC Deed of Trust or  
25 the promissory note secured thereby, and that HSBC is the current  
26 holder and/or servicer of the subject promissory note and HSBC Deed  
27 of Trust. **[MGW Dec.¶11]**

1 In the Proof of Claim and documents filed in support thereof  
2 in the Bankruptcy Case by America's Servicing Company ("ASC") on or  
3 about June 25, 2008, as Claim Number 2 on the court claim docket  
4 ("the ASC Claim"), ASC asserted a claim against Plaintiff in the  
5 sum of \$421,516.53, and further asserted that said claim is secured  
6 by a lien against the Property. Attached as an exhibit to the ASC  
7 Claim is a copy of a deed of trust in the amount of \$408,000.00 in  
8 favor of Lender, LIME FINANCIAL, which deed of trust was recorded  
9 in or about April 18, 2006, in the Contra Costa County Recorder's  
10 Office as Document Number 2006-0120354-00 ("the ASC Deed of  
11 Trust"). **[MGW Dec.¶12 and Request for Judicial Notice and Exhibit**  
12 **"D" thereto]**

13  
14 In the online records of the Contra Costa County Recorder's  
15 Office reviewed on July 11, 2010, there is no assignment of the ASC  
16 Deed of Trust recorded in the Contra Costa County Recorder's  
17 Office, although Plaintiff is informed and believes that LIME  
18 FINANCIAL assigned its interest in the ASC Deed of Trust through  
19 Mortgage Electronic Registering Service ("MERS"), that it no longer  
20 has an interest in the ASC Deed of Trust or the promissory note  
21 secured thereby, and that ASC is the current holder and/or servicer  
22 of the subject promissory note and ASC Deed of Trust. **[MGW Dec.¶13]**  
23

24 On July 11, 2010, the online records of the Contra Costa  
25 County Recorder's office and the Westlaw database were checked, and  
26 the only deeds of trust recorded against the Property are the HSBC  
27 Deed of Trust and the ASC Deed of Trust. **[MGW Dec.¶14]**  
28

1 The ASC Deed of Trust is senior in priority to the HSBC Deed  
2 of Trust. **[MGW Dec.¶15]**

3  
4 The value of the Property as of the filing of the bankruptcy  
5 case was \$325,000.00 as set forth on the verified Schedule A filed  
6 by Debtor under penalty of perjury on May 27, 2008, and pursuant to  
7 an appraisal which valued the Property by Sales Comparison Approach  
8 as \$320,000 and by Cost Approach as \$324,762. **[See Request for**  
9 **Judicial Notice and Exhibit "A" thereto, and MGW Dec.¶17 and**  
10 **Exhibit "A" thereto]**

11  
12 On July 11, 2010, counsel checked the online records of the  
13 California Secretary of State and it was confirmed that neither the  
14 corporate address nor the address for the agent for service for  
15 HSBC had changed since service of the Original Summons. **[MGW**  
16 **Dec.¶18]**

17  
18 Copies of the within Application For Default Judgment, the  
19 Declaration of Marlene G. Weinstein and the Request For Judicial  
20 Notice and the proposed Default Judgment are being served on HSBC  
21 at both its corporate office and through its agent for service of  
22 process. **[MGW Dec.¶19 and Exhibit "B" thereto]**

23  
24  
25 On July 11, 2010, counsel checked the online records of the  
26 California Secretary of State and confirmed that LIME FINANCIAL  
27 "Surrendered" its California certificate. Counsel immediately  
28 thereafter checked the online records of the Oregon Secretary of  
State and confirmed that the corporate address for LIME FINANCIAL

1 had not changed since service of the Alias Summons and that its  
2 agent for service of process in Oregon is Corporation Service  
3 Company ("CSC"), 285 Liberty Street, Salem, Oregon 97301. [MGW  
4 Dec.¶20 and Exhibit "C" thereto]

5  
6 Copies of the within Application For Default Judgment, the  
7 Declaration of Marlene G. Weinstein, the Request For Judicial  
8 Notice and the proposed Judgment are being served on LIME FINANCIAL  
9 through CSC, its Oregon agent for service of process, at its  
10 corporate offices, and at the address for Debra Bowen, the  
11 California Secretary of State pursuant to California Corporations  
12 Code Section 2114. [MGW Dec.¶21]

13  
14 LEGAL ARGUMENT

15  
16 11 U.S.C. §1322(b)(2) provides, in relevant part, that a  
17 Chapter 13 plan may "modify the rights of ... holders of unsecured  
18 claims ... "

19  
20 11 U.S.C. §506(a) provides, in relevant part, as follows:

21  
22 "(a) An allowed claim of a creditor secured by a lien on  
23 property in which the estate has an interest, ..., is a  
24 secured claim to the extent of the value of such  
25 creditor's interest in the estate's interest in such  
26 property, ..., and is an unsecured claim to th extent  
that the value of such creditor's interest ... is less  
than the amount of such allowed claim. ..."

27 11 U.S.C. §506(d) provides, in relevant part, as follows:  
28

1       “(d) To the extent that a lien secures a claim against  
2       the debtor that is not an allowed secured claim, such  
3       lien is void, ....”

4       Since the value of the Property is less than the value of the  
5       ASC Deed of Trust which is senior to the HSBC Deed of Trust, HSBC  
6       does not have an allowed secured claim and its claim is wholly  
7       unsecured, Lime Financial does not have a secured claim and any  
8       claim it may have, if any is wholly unsecured, and the HSBC Deed of  
9       Trust can be avoided and cancelled.

10  
11       Notwithstanding the foregoing, as provided in 11 U.S.C.  
12       §349(b)(1)(C), “Unless the court, for cause, orders otherwise, a  
13       dismissal of a case other than under section 742 of this title,  
14       reinstates any lien voided under section 506(d) ... ”

15  
16       **WHEREFORE**, it is respectfully requested that this Court enter  
17       a default judgment in favor of plaintiff and debtor, Harpal Kaur  
18       Gill, and against defendants, HSBC Mortgage Services, Inc. and Lime  
19       Financial Services, Ltd. as follows:

20  
21       1. For an order declaring that the Proof of Claim filed by  
22       HSBC Mortgage Services in the within-captioned bankruptcy case  
23       asserting a claim against Plaintiff in the sum of \$102,454.59 shall  
24       be disallowed as a secured claim, and allowed solely as an  
25       unsecured claim in the amount of \$102,454.59;

26  
27       2. For an order declaring that HSBC Mortgage Services, Inc.  
28       does not have a secured claim;



1           3. For an order declaring that Lime Financial Services, Ltd.  
2 does not have a secured claim;

3  
4           3. For an order declaring that for purposes of Debtor's  
5 Chapter 13 plan only, the lien evidenced by the deed of trust  
6 recorded on April 18, 2006, in the Official Records of Contra Costa  
7 County, as Document Number 2006-0120355-00 ("the LIEN"), is valued  
8 as zero;

9  
10          4. For an order declaring that the LIEN may not be enforced  
11 pursuant to 11 U.S.C. §§ 506, 1322(b)(2) and 1327;

12  
13          5. For an order declaring that upon entry of a discharge in  
14 Debtor's Chapter 13 case, the LIEN shall be voided for all  
15 purposes;

16  
17          6. For an order declaring that upon Plaintiff's completion  
18 of her Chapter 13 plan, receipt of her Chapter 13 discharge, and  
19 upon the recording of a certified copy of the Order Discharging  
20 Debtor entered in the above-captioned bankruptcy case, the LIEN  
21 shall be cancelled and shall be deemed to be null and void;

22  
23          7. For a order declaring that in the event Plaintiff's  
24 Chapter 13 case is dismissed or converted to one under another  
25 chapter before Debtor obtains a discharge, the judgment to be  
26 entered pursuant to the withing application shall cease to be  
27 effective and the LIEN shall be retained to the extent recognized  
28 by applicable nonbankruptcy law, and upon application by the

1 Defendants, the court will enter an appropriate form of order  
2 restoring the LIEN;

3  
4 8. For an order declaring that except as provided by a  
5 separate, subsequent judgment or order of this court, the LIEN may  
6 not be enforced so long as the judgment entered pursuant to the  
7 within application remains in effect;

8  
9 9. For an order reserving the court's jurisdiction to  
10 enforce the terms of the judgment to be entered pursuant to the  
11 within application.

12  
13 Dated: July 12, 2010

LAW OFFICE OF MARLENE G. WEINSTEIN

14  
15  
16 By: /s/ Marlene Gay Weinstein

Marlene G. Weinstein  
Attorney for Plaintiff  
Harpal Kaur Gill